

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2005/001538

International filing date (day/month/year)
14.02.2005

Priority date (day/month/year)
17.02.2004

International Patent Classification (IPC) or both national classification and IPC
A61B19/00, A61F2/46

Applicant
POLITECNICO DI MILANO

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2005/001538

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 14-22

because:

☒ the said international application, or the said claims Nos. 14-22 relate to the following subject matter which does not require an international preliminary examination (*specify*):

see separate sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the whole application or for said claims Nos. 14-22

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished

☐ does not comply with the standard

the computer readable form ☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2005/001538

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	5,7-13
	No: Claims	1-4,6
Inventive step (IS)	Yes: Claims	7-11
	No: Claims	1-6,12,13
Industrial applicability (IA)	Yes: Claims	1-13
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

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Re Item III.

The subject-matter of claims 14-22 relates to a method for treatment of the human or animal body by surgery. In view of Article 34(4)(a)(i) PCT and Rules 43bis and 67 PCT, an International Search or Examination Authority is not required to establish a written opinion on this subject-matter.

Re Item V.

- 1 Reference is made to the following document:

D1 : EP 0 824 893 A (ARTHREX INC) 25 February 1998 (1998-02-25)

- 2 INDEPENDENT CLAIM 1

Document D1 (figs. 1-3, 6, 9, 10) discloses a surgical instrument for geometrical evaluation of an object inside a body of a human being or animal, the instrument comprising a handle (34), a reference device (2) and means (6) for bringing said reference device into the vicinity of said object (figs. 9, 10), said instrument co-operating with an image acquisition device for acquiring at least one image of said reference device when it is in the vicinity of said object (col. 5, ll. 17-29).

As can be seen from the above, document D1 discloses in combination all the features defined in independent claim 1. Hence the subject-matter of this claim is not new (Article 33(2) PCT).

- 3 DEPENDENT CLAIMS 2-6, 12, 13

Dependent claims 2-6, 12, 13 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

- 4 DEPENDENT CLAIMS 7-11

The combination of the features of dependent claims 7-11 are neither known from, nor rendered obvious by, the available prior art, since neither support arms for the reference device nor a recall system for recalling the reference device from an unfolded to a retracted position is known or rendered obvious by the available prior art.

Remarks

- 1 Article 6 PCT
 - 1.1 In claim 1, the definition "means for bringing said reference device into the vicinity of said object" merely refers to the result to be achieved. Furthermore, the term "co-operating" should have been replaced by "being adapted to co-operate" since the image acquisition device is not part of the instrument (1) to which claim 1 is directed.
 - 1.2 Similarly, claims 2 and 4 refer to the object (human or animal body) not forming part of the claimed instrument. The intended limitations are therefore entirely unclear.
 - 1.3 In claim 3, the term "or the like" is vague and unclear.
 - 1.4 In claim 9, the term "is moved" should have been replaced by "is adapted to be moved". This claim should also refer back only to claim 8 to provide basis for the positions referred to.
- 2 Claim 1 is not in the two-part form as required by Rule 6.3(b) PCT.
- 3 Document D1 is not acknowledged in the description as foreseen in Rule 5.1(a)(i) PCT.